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Michel Barnier
European Commissioner for Internal Market and Services
European Commission
BERL 10/034
B-1049 Brussels



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Dear Commissioner Barnier

I am sorry that it has not been possible to meet with you during my visit to Brussels today, but I hope that we can arrange a meeting between you and one of my senior Ministers as soon as possible to discuss an issue that has wide political support both in Scotland and beyond, and which can have a significant impact on workers across Europe. The issue is whether or not companies that win public contracts can be required, as a condition of contract, to pay the employees who will perform the contract a "living wage".

As you will be aware, the Scottish Government and Parliament have devolved responsibility for the development and application of public procurement policy in Scotland. We also have the powers to implement procurement legislation for Scotland and will implement the three new EU Procurement Directives which came into force on 17th of this month independently of the UK Government and UK Parliament.

We have also introduced the Procurement Reform (Scotland) Bill to the Scottish Parliament. This is a significant element of the continuing Public Procurement Reform Programme in Scotland. The Programme centres on the Scottish Model of Procurement, which puts procurement at the heart of Scotland's economic growth. It sees procurement as an integral part of policy development and service delivery. It is a simple concept - business friendly, socially responsible. Focussing on outcomes not outputs, it uses the power of public spend to deliver genuine public value beyond simply cost/quality in purchasing. During recent debates on this Bill in the Scottish Parliament, the question of whether or not a living wage which is higher than the current UK national minimum wage can be imposed as a mandatory contract condition as part of the procurement process has generated much political and media interest.

A "living wage" (distinct from the UK National Minimum Wage) is defined as a wage that gives individuals and families in a particular locality enough income to meaningfully participate in society, rather than merely afford the basic necessities. The living wage is not universally applicable and is not required by law; it is calculated independently of the Scottish and UK Governments and the amount varies on a regional basis.

You may recall that this is an issue on which we have previously communicated; a copy of my Government's correspondence of 7 December 2011 and your response of 7 May 2012 are attached to my letter. Your response stated that any requirement as part of a public procurement process which mandates that a contractor must pay the living wage would have to comply with the Posting of Workers Directive and that a living wage set at a higher rate than the UK's minimum wage is unlikely to meet the requirement not to go beyond the mandatory protection provided for by the Directive. I am aware of the case law from the Court of Justice of the European Union which you quoted and which supports this position.

Tackling low pay is an important issue for the Scottish Government. We pay at least the living wage to all of our own employees and to everyone who works in the National Health Service in Scotland, and we are committed to doing so for the entire duration of the current Parliamentary session. This is a decisive and long term commitment to those on the lowest incomes. In addition, we are funding an organisation, Poverty Alliance, to pilot a living wage accreditation scheme and increase the number of private sector employers who are paying the living wage in Scotland. Whilst we strongly encourage all public, private and third sector organisations to pay the living wage, we recognise that when services are provided to or on behalf of public bodies under public contracts, those bodies have very little control over the pay that the contractors' staff receive in performing the contract.

As you have recognised, public procurement accounts for nearly 19% of European GDP and public bodies can, and should, optimise their use of public procurement as a key driver of the economy. Indeed, one of the aims of the recent work to modernise EU procurement legislation has been to use procurement to better serve other public sector policies. For Contracting Authorities to be unable to ensure that the workers delivering public contracts receive a rate of pay that is necessary to ensure an acceptable standard of living, where this rate is in excess of the National Minimum Wage, would therefore seem to be inconsistent with that aim.

This is an important issue that has practical, and potentially significant, consequences especially in those types of contracts where low pay is traditionally an issue. Public bodies need to be able to send a strong message to companies wishing to bid for public contracts that they will have their approach to managing, rewarding and engaging with their workforce fully evaluated as an important part of the procurement process. In effect, they will need to be able to demonstrate that they are not trying to win public contracts by undercutting competitors on the basis of a poorly rewarded, poorly motivated and poorly managed workforce.

I recognise the constraints that currently exist for public purchasers, as clearly set out in your earlier letter, but I would welcome a meeting between yourself and one of my Cabinet colleagues to discuss and clarify what more can be done within EU law to help ensure that public bodies can, lawfully, encourage their contractors to pay staff involved in delivering their contracts a living wage.

I expect the Procurement Reform (Scotland) Bill will be debated again in the Scottish Parliament next month, so it would be extremely helpful if we could arrange a meeting prior to that.

A handwritten signature in black ink, reading "Alex Salmond". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

ALEX SALMOND

